

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

## ORDER

Petitioner, a federal prisoner appearing *pro se*, brought this action for a writ of habeas corpus pursuant to 28 U.S.C. §2241. In the petition, he seeks his immediate release from federal custody. In accordance with 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Valerie K. Couch for initial proceedings.

In response to the petition, Respondents filed a motion to dismiss the action, to which Petitioner responded. On May 29, 2008, the Magistrate Judge filed a Report and Recommendation [Doc. No. 19] in which she recommended that the motion to dismiss be granted and that the action be dismissed as a successive petition, pursuant to 28 U. S. C. § 2244(a). In the alternative, she recommended that the Motion to Dismiss be construed as an Answer and that the Petition be denied. Petitioner also filed a Motion for Summary Judgment; the Magistrate Judge recommended that his motion be denied.

In the Report and Recommendation, the Magistrate Judge advised Petitioner of his right to object to the same and scheduled a June 18, 2008 deadline for filing objections. The Magistrate

Judge also advised Petitioner that a failure to timely object would constitute a waiver of his right to appellate review of the factual findings and legal conclusions contained in the Report and Recommendation.

The deadline for filing objections has expired; Petitioner has not filed an objection and has not sought an extension of time in which to do so. Accordingly, the Report and Recommendation [Doc. No. 19] is adopted, and this action is dismissed with prejudice as successive or abusive, pursuant to 28 U. S. C. § 2244(a)<sup>1</sup>.

IT IS SO ORDERED this 27<sup>th</sup> day of June, 2008.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>As the Magistrate Judge discussed in detail, the Tenth Circuit Court of Appeals has not applied the prior court of appeals authorization requirements of 28 U. S. C. § 2244(b)(3)(A) to successive habeas petitions filed by federal prisoners pursuant to 28 U. S. C. § 2241; instead, it has limited the requirements of § 2244(b)(3)(A) to state prisoners seeking § 2254 habeas relief and federal prisoners seeking § 2255 relief. See, e.g., McIntosh v. U.S. Parole Comm'n, 115 F.3d 809, 811 (10<sup>th</sup> Cir. 1997). In a number of unpublished decisions cited and discussed at pages 8-11 of the Report and Recommendation, the Tenth Circuit has affirmed district court dismissals of § 2241 habeas actions brought by federal prisoners on grounds that the petitions were second or successive, and it has rejected a requirement that prior circuit authorization is required in such cases. See, e.g., Tuggle v. Addison, 247 Fed. Appx. 155, 157 (10<sup>th</sup> Cir. Sept. 7, 2007). Accordingly, the Court agrees with the Magistrate Judge that this action need not be transferred to the Tenth Circuit for authorization in accordance with 28 U. S. C. § 2244(b)(3)(A), and should be dismissed.

